IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

ORDER

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S.B. Sales Tax Revision Petition No. 44/2004

Assistant Commissioner,
Works Contract & Leasing Tax, Zone-II, Jaipur

Versus

M/s. Delite Engineers,
A-72, Vijay Nagar, Kartarpura, Jaipur

::

Date of order :: September 05,2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. R.B. Mathur for the petitioner-Revenue
Mr. J.N. Sharma for the respondent-assessee

BY THE COURT:

This revision petition is directed against the order of the Tax Board dated 08.10.2003, whereby the Tax Board allowing the appeal of the assessee held that goods purchased in the course of inter-State trade and commerce for the purpose of using them in execution of works contract within the State of Rajasthan could

not be taxed by virtue of Explanation II to Section 2(38) of the RST Act, 1994, which had been held to be ultra vires by the Hon'ble Supreme Court and by this court in the case of ***Triveni Engineering and Industries Ltd. Vs. State & Ors.*** reported in (2001) 124 STC 17. The relevant extract of the said judgment is reproduced hereunder for ready reference :-

> *"Explanation II to Section 2(38) of the Rajasthan Sales Tax Act, 1994 in so far as it provides that notwithstanding that an agreement for works contract has been wholly or in part entered into outside the State or the goods have wholly or in part moved outside the State as a result thereof, it shall be deemed to be a sale within the State if the goods are in the State at the time of their use, application or incorporation in the execution of the contract, is beyond the legislative competence of the State Legislature, and is in direct violation of entry 92A of the Union List in the Seventh Schedule to the Constitution and article 286 thereof. Sub-clause 2 (a) of article 286 makes it clear that the power to tax sales taking place in the course of inter-State trade or commerce is within the exclusive competence of Parliament. The Central Sales Tax Act, 1956 provides that where the goods move from one State to another as a result of the agreement of sale, the transaction is of sale or purchase in the course of inter-State trade or commerce irrespective of where the property in the goods passes to the buyer. Therefore, the provisions of Explanation II to section 2(38) of the Rajasthan Sales Tax Act, 1994, which make it permissible for the State to impose tax on the sale or purchase of goods which have moved from one State to another as a result of works contract in execution of which such goods are to be involved, solely on the basis of place of involvement of the goods in execution thereof, are ultra vires the power of the State Legislature. (see*

paras 26 and 31)

Steel Authority of India Ltd. v. State of Orissa [2000] 118 STC 297 (SC) relied on."

The assessing authority in para 4 of the assessment order has clearly found that the assessee had made the inter-State purchases during the assessment period in question amounting to Rs.19,65,346.88 for execution of works contract within the State of Rajasthan, which was taxable within the State of Rajasthan and therefore, adding the profit element therein, the tax was determined.

In view of the controversy now have already been settled by the Apex Court as well as Division Bench of this court, no error is found in the impugned order of the Tax Board dated 08.10.2003.

Consequently, this revision petition is found to be devoid of merit and the same is dismissed with no order as to costs.

(Dr.VINEET KOTHARI),J.

Pramod
Item No. 11